

FCC MAIL SECTION

Federal Communications Commission

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DA 98-1486

AUG 6 3 13 PM '98

Before the
Federal Communications Commission
DISPATCHED BY Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Whitehall, Montana)

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MM Docket No. 98-138
RM-9309

NOTICE OF PROPOSED RULE MAKING

Adopted: July 22, 1998

Released: July 31, 1998

Comment Date: September 21, 1998

Reply Date: October 6, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Whitehall Broadcasting Company ("petitioner") proposing the allotment of Channel 274A at Whitehall, Montana, as that community's first local FM broadcast service. Petitioner indicated that it would file an application for Channel 274A at Whitehall if the channel is allotted to the community.

2. We believe petitioner's proposal warrants consideration. A staff analysis has determined that Channel 274A can be allotted to Whitehall, Montana, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 12.7 kilometers (7.9 miles) northwest of the community.¹ The site restriction will prevent a conflict with an application for Channel 275C at Island Park, Idaho (BPH-961023MJ).

3. In support of its request for the allotment of Channel 274A at Whitehall, petitioner provided information demonstrating that Whitehall, Montana, is a community for allotment purposes. Petitioner states that Whitehall is incorporated with a 1990 Census population of 1,067 people. According to petitioner, Whitehall has its own sheriff, volunteer fire department, public library and five churches, and there is a senior citizens center as well as numerous health care facilities. Petitioner points out that Whitehall has a variety of restaurants, grocery and convenience stores, a bank, insurance agencies and legal offices, as well as several motels. Petitioner contends that the allotment of Channel 274A at Whitehall will provide a means of local

¹ The coordinates for Channel 274A at Whitehall are 45-56-11 and 112-13-51.

expression for the residents of Whitehall.

4. In view of the fact that the proposed allotment would provide Whitehall with its first local FM broadcast service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 274A to Whitehall, Montana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Whitehall, as follows:

Community	Channel No.	
	Present	Proposed
Whitehall, Montana	-----	274A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 21, 1998**, and reply comments on or before **October 6, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Frank R. Jazzo
Andrew S. Kersting
Fletcher, Heald & Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Arlington, Virginia 22209

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary

of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed

comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.